

Claims 1-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the WO 97/12630 in view of Ragab U.S. 6,346,524 and Kline U.S. 6,180,096 or WO 95/13090. In response, applicant provides the following comments.

"It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious....'[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'" In re Fritch, 23 U.S.P.Q.2d at 1784 (quoting In re Fine, 5 U.S.P.Q.2d at 1600).

Applicant respectfully traverses the rejection and presents the following comments. Applicant respectfully suggests that impermissible hindsight reconstruction has been applied in this case to render these claims obvious.

Applicant claims a method of treatment using therapeutically effective amounts of temozolomide in combination with **pegylated** interferon alpha. Therapeutically effective amounts temozolomide and pegylated interferon alpha are described on page 3, lines 16-27 and pages 6-7, lines 25, et al. **Pegylated** interferon alpha is described on page 4, lines 12-20 of the specification, as the polyethylene glycol modified conjugates of interferon alpha.

WO 97/12630 discloses the combination therapy of temozolomide and, interferon alpha, specifically interferon alpha 2b (see generally, Abstract, pages 4-5 of the specification and claims 1-21). Absent the teaching of pegylated interferon in WO 97/12630, the Examiner relies upon the references Kline and WO 95/13090 for their disclosure of PEG interferon alpha 2b (see generally, Abstract, for both references). Finally, the Examiner cites Ragab and its use of temozolomide **alone**, (see generally, Abstract, col. 2, lines 31-45 and claims 1-11 of Ragab).

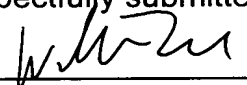
Applicants respectfully note that hindsight reconstruction is not an allowable basis for an obvious rejection under § 103. In re Dow Chem. Co. v. American Cyanamid Co., 837 F.2d 469, 473 U.S.P.Q.2d 1529, 1531-32 (Fed. Cir. 1988). Applicant and the Examiner are both in agreement that, WO 97/12630, does not teach the use of pegylated interferon. However, Applicant respectfully suggests there is no suggestion or motivation from WO 97/12630, Kline, WO 95/13090 and Ragab to combine their teachings together to render the present invention, a method of treatment using therapeutically effective amounts of temozolomide in combination

with pegylated interferon alpha, obvious under § 103. None of the references cited, either singly or in combination with each other, suggest the applicant's claimed method of combination therapy with temozolomide and pegylated interferon. Furthermore, there is no teaching in any of the cited references that temozolomide and pegylated interferon- $\alpha$  can be synergistically combined. Applicant respectfully suggests that the only suggestion to combine the teachings of the cited references comes from the applicant's specification itself. "There must be a reason or suggestion in the art for selecting the procedure used, other than the knowledge learned from applicant's disclosure". Therefore, reconsideration and withdrawal of this ground of rejection is respectfully urged.

In view of the foregoing, applicant submits that the application, as pending, is in condition for allowance and courteously solicit a Notice of Allowance.

The Examiner is requested to call the undersigned attorney on any matter connected with this application.

Respectfully submitted,

  
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